IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

MFA.No. 140 of 1998(C)

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MVOP.858/1988 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR

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APPELLANTS/RESPONDENTS 4 & 5:

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1. CHENNAN, S/O. CHITTU SANKARAN
   NEDUPUZHA,KANIMANGALAM VILLAGE
   THRISSUR DISTRICT.

2. KARTHIYANI, D/O. CHENNAN,
   CHITTOOR VEETTIL HOUSE
   P.O. KANIMANGALAM, NEDUPUZHA.

BY ADV. SRI.P.VIJAYA BHANU
SRI.T.A.UNNIKRISHNAN

RESPONDENTS: PETITIONER & RESPONDENTS 1 TO 3 & 6

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1. GANGA ALIAS GANGADHARAN
   S/O. CHAMPILLY RAMAN, PERINGAVU DESOM
   CHEMBUKKAVU VILLAGE,THRISSUR DISTRICT.

2. MOHAMMED BASHEER, S/O. ABDULLAH
   ATTUPARAMBATHU VEEDU, KOORKANCHERRY.

3. M.K.VINCENT, S/O. KUNJUVAREED
   MOORKKANATTUKARAN HOUSE, VARAKKARA
   MUKUNDAPURAM TALUK.

4. DISTRICT INSURANCE OFFICER
   KERALA STATE INSURANCE DEPARTMENT
   AYYANTHOLE, THRISSUR.

5. CHANDRIKA, D/O. CHENNAN
   CHITTOOR VEETTIL HOUSE, P.O.KANIMANGALAM
   THRISSUR.

BY ADV. SRI.DINESH MATHEW J.MURICKEN
SRI.M.GEORGE THOMAS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO. 576/1998 IN M.F.A.NO. 140/1998

DISMISSED

Sd/-

4.1.2007 K.T.SANKARAN, JUDGE

/TRUE COPY/

P.A. TO JUDGE

**K.T.SANKARAN, J**

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M.F.A. No. 140 of 1998

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Dated this the 4th day of January, 2007

**JUDGMENT**

This appeal is filed by respondents 4 and 5 in MVOP No.858 of 1988 on the file of the Motor Accident Claims Tribunal, Thrissur. The O.P. was filed by Ganga alias Gangadharan claiming to be the husband of the deceased Thankamani, who died in a motor vehicle accident. Respondents 4 and 5 in the MVOP are respectively the father and sister of the deceased. The sixth respondent Chandrika is also a sister of the deceased Thankamani.

2. The respondents 4 and 5 in the MVOP contended that the petitioner Ganga alias Gangadharan is not the husband of the deceased and that his wife Thankamani is not the deceased Thankamani. The petitioner produced Exts. A4 judgment in OP (MV)No.1565 of 1980 wherein the petitioner and his wife Thankamani were the petitioners. That was a case where the petitioner herein and Thankamani claimed compensation on account of the death of their son Raman. OP(MV)No.1565 of 1980 was allowed and compensation was awarded. Ext. A5 is an

affidavit sworn to by Thankamani, daughter of Chittu Chennan in OP(MV)No. 1565 of 1980. In that affidavit, it is stated that the deponent, who was the second petitioner in OP(MV)No. 1565 of 1980 had no objection in releasing certain amount to the first petitioner therein, who is Gangadharan, the petitioner in the present O.P. Ext. B3 is produced by the contesting respondents to substantiate their contention that the wife of the petitioner Gangadharan is Thankamani, daughter of Koran and not Thankamani, daughter of Chennan. Ext.B3 is the assignment deed in favour of Gangadharan and his wife Thankamani, daughter of Koran. The petitioner was examined as PW2 and he was cross examined. The fifth respondent in the OP was examined as RW1. In chief examination, RW1 stated that Thankamani was a spinster. She also stated that the petitioner Gangadharan had married another Thankamani and not the deceased Thankamani. In cross examination, RW1 stated that deceased Thankamani had one child. It is also stated that Thankamani had got an order in her favour for compensation and that it might be true that the petitioner was also one of the

petitioners in the application filed for compensation.

3. The Tribunal awarded a sum of Rs.63,200/- as compensation and it was held that the petitioner would be entitled to get Rs.25,200/- while respondents 4 and 5 would be entitled to get Rs. 18,960/- each. Issue No. 1 raised by the Tribunal is "Whether the petitioner is the husband of the deceased". Issue Nos. 1 and 3 are answered in paragraph 13 of the judgment. However, the Tribunal has not rendered any finding as to whether the petitioner is the husband of the deceased. The dispute between the parties has not been considered at all by the Tribunal. The facts mentioned above, the pleadings, and the evidence were not adverted to by the Tribunal.

4. Since the Tribunal has not arrived at any finding on issue No. 1 and has not arrived any finding on the disputed question, I am inclined to set aside the award passed by the Tribunal and to remand the case into the Tribunal for fresh disposal. The Tribunal shall consider the pleadings, the documentary and oral evidence in the case and answer issue

No. 1 showing reasons for the conclusion. It is made clear that the finding on issue No. 4 and the finding that the compensation payable is Rs.63,200/- are not disturbed and those findings shall remain as such. It is submitted by the counsel appearing for either side that the parties may be afforded an opportunity to adduce such other evidence as they wish to adduce. I am inclined to allow that request.

In the result, the award passed by the Tribunal is set aside to the extent indicated above. The Tribunal shall dispose MVOP afresh in the manner indicated above. The parties shall appear before the Tribunal on 5th February, 2007. Send back records. The Tribunal shall dispose of the petition within a period of four months from the date fixed for appearance.

**K.T.SANKARAN,**
**JUDGE**

csl